

AG Contract No.: KR04-1337TRN
ADOT ECS File No.: JPA 04-073
Project: SR 95, MP 181.9 – 182.2
Section: Swanson – Mesquite
TRACS No.: H6409 01C
Budget Source Item No.: 75005

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF LAKE HAVASU

THIS AGREEMENT is entered into this date April 20, 2005, pursuant to Arizona Revised Statutes, § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF LAKE HAVASU, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The state is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities.

4. The City has selected such project within the boundary of the City; the survey of the project has been completed; and as required, submitted to the Federal Highway Administration (FHWA) for its approval.

5. The State and the City wish to participate in the design, construction, maintenance, landscaping and hardscaping of State Route (SR) 95 from the South side of Swanson to the North side of Mesquite, Milepost (MP) 181.9 – 182.2, herein and after referred to as the "Project". The Project will include the construction of walls and columns, landscaping of palm trees, shrubs, irrigation, and irrigation sleeves and decomposed granite. The State will design and construct the Project and the City agrees to contribute \$153,000.00 prior to advertising for the Project. The estimated costs are as follows:

NO. 27476
Filed with the Secretary of State
Date Filed: 04/20/05

Janice K. Brewer
Secretary of State

By: Wm. J. Heenebold

TRACS No.: H640901C

Estimated Federal-aid funds @ 100%	\$ 420,000.00
Estimated City funds @ 100% Contribution	\$ 153,000.00
* Total Estimated Design & Construction Costs:	\$ 573,000.00

*Includes 15% for Construction Engineering Administration and 5% for Change Orders.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement and within 30 days of the bid date, the State will invoice the City \$153,000.00, for costs associated to complete the Project.

b. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction.

c. Prepare plans, specifications and an estimate for the Project and will submit them to the City for comments as appropriate. After the City concurs with the plans, the State will construct using Federal Funds and the City will contribute \$153,000.00 to the Project.

d. Be responsible for contractor claims for additional compensation caused by Project delays attributable to the State.

e. Construct the Project approved by FHWA, if such funds are available for construction. Be the designated authorized agent with the consent of the City and the FHWA and proceed to advertise for, and open bids with the aid and consent of the City and the FHWA. Enter into a contract(s) with a firm(s) to whom the award is made with the concurrence of the FHWA. Enter into a Project Agreement with FHWA on behalf of the City to perform, complete, accept and pay for in accordance with instructions and requirements of the City and the Arizona Department of Transportation. Request the maximum federal funds available including construction, engineering and administration costs.

f. If sufficient Federal funds are not available to begin or complete the Project, refund unused portion of the funds submitted by the City on pro-rata basis.

g. Not be obligated to maintain this Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City will:

a. Review the design documents required for construction of the Project, and provide comments as appropriate to the State.

b. Upon execution of this Agreement, does hereby designate the State as authorized agent for the City and within thirty (30) days upon receipt of an invoice from the State and prior to the bid date, remit \$153,000.00 to the State, for cost associated to complete the Project.

c. Upon completion of construction, provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance of the improvements, including but not limited to landscaping, the irrigation system, pay for the irrigation systems electrical power, including all testing, adjusting, repairing and operation of the irrigation system, and furnish all electrical power necessary to operate the irrigation system. Landscape maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices; keeping all areas free of weeds; undesirable grasses and litter; applying irrigation water; furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests; pruning and replanting as required to maintain the landscaping as it was designed and established at the completion of the Project

d. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of work called for in this agreement, the City shall be obligated to incur any expenditures in excess. Such changes require the prior approval of the State.

III. MISCELLANEOUS PROVISIONS

1. Each party (as "indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys' fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA, as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. This Agreement shall remain in force and effect until completion of the said Project and reimbursements; provided, however, that this Agreement, except any provisions for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a Project construction contract, upon thirty (30) days written notice to the other party

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State and the City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and/or the City at the end of the period for which the funds are available. No liability shall accrue to the State and/or the City in the event this provision is exercised, and the State and/or the City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph

10. All notices or demand upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007

City of Lake Havasu
City Manager
2330 McCulloch Blvd. N
Lake Havasu City, AZ 86403

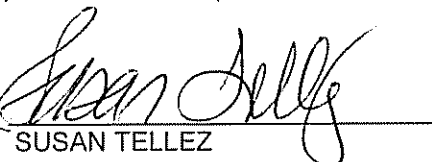
11. Pursuant to Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.


CITY OF LAKE HAVASU

By 
BOB WHELAN
Mayor

STATE OF ARIZONA
Department of Transportation

By 
SUSAN TELLEZ
Contract Administrator

ATTEST

By 
CARLA SIMENDICH
City Clerk

APPROVAL OF THE CITY OF LAKE HAVASU

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF LAKE HAVASU, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 30th day of March, 2005.

Michael D. Storch
asst City Attorney

RESOLUTION NO. 05-1937

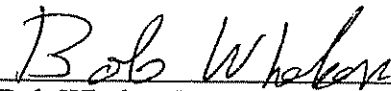
**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF LAKE HAVASU
CITY, MOHAVE COUNTY, ARIZONA, AUTHORIZING THE
MAYOR TO EXECUTE AN INTERGOVERNMENTAL
AGREEMENT WITH THE STATE OF ARIZONA (ADOT)
FOR DESIGN AND CONSTRUCTION OF SR95 LANDSCAPING
IMPROVEMENTS, SWANSON TO MESQUITE**

WHEREAS, the Arizona Department of Transportation has applied for and received Federal Highway Administration funding for the SR95 Landscaping Improvements Swanson to Mesquite; and


WHEREAS, Lake Havasu City wishes to enter into an intergovernmental agreement with ADOT to participate in the funding of the project.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council hereby approve this intergovernmental agreement for the intent and purpose stated above, and authorize the Mayor to execute said agreement with the State of Arizona (ADOT) relating to the design and construction of the SR95 Landscaping Improvements, Swanson to Mesquite.

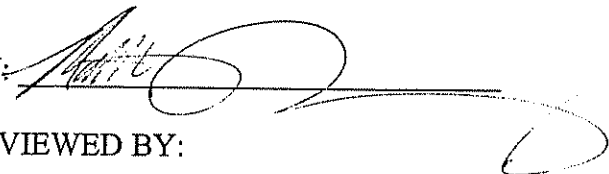
PASSED AND ADOPTED by the Mayor and City Council of Lake Havasu City, Arizona, this 22nd day of March, 2005.


Bob Whelan, Mayor

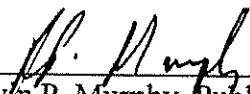
ATTEST:

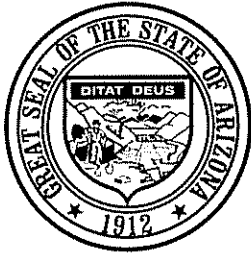

Carla Simendich, City Clerk

APPROVED AS TO FORM
LAKE HAVASU CITY ATTORNEY'S OFFICE:

BY: 

REVIEWED BY:


Kevin P. Murphy, Public Works Director



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646


**INTERGOVERNMENTAL AGREEMENT
DETERMINATION**

A.G. Contract No. KR04-1337TRN (**JPA 04-073**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED April 12th, 2005.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section